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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

FRANCISCO PARDO,

Plaintiff and Appellant,

v.

UNIVERSITY OF CALIFORNIA, SAN
DIEGO MEDICAL CENTER,

Defendant and Respondent.

D054229

(Super. Ct. No. 37-2008-00083217-
CU-WM-CTL)

APPEAL from a judgment of the Superior Court of San Diego County, Ronald L. Styn, Judge. Affirmed.

Francisco Pardo, M.D., appeals from a judgment entered in favor of University of California, San Diego, Medical Center (UCSDMC), after the trial court denied his petition for writ of administrative mandate brought under Code of Civil Procedure section 1094.5. In his petition, Pardo moved (1) to set aside the decision of the appeal board of UCSDMC (appeal board), which unanimously affirmed the decision of the judicial review committee (JRC) denying his application for reappointment to UCSDMC's

medical staff and (2) to compel UCSDMC to accept his application for reappointment "with all the rights and privileges he previously enjoyed."

Pardo's petition claimed that the various administrative bodies of UCSDMC, including the appeal board, violated the bylaws of UCSDMC, acted unreasonably and capriciously and denied him a fair hearing. Among other things, he argued the appeal board did not exercise its independent judgment but instead "rubber stamp[ed]" the decision of the JRC, which decision, he argued, was also not supported by substantial evidence.

The trial court denied the petition. In its order, the trial court reviewed each claim of error alleged by Pardo, determined the procedures taken by UCSDMC and its various administrative bodies substantially complied with the bylaws of UCSDMC and Pardo received a fair hearing. The trial court also found substantial evidence in the administrative record supported the decision of the appeal board and the JRC denying Pardo's application for reappointment to the medical staff.

On appeal, Pardo asks this court to reverse the decision of the trial court and "find both [the] JRC and the [appeal] [b]oard erroneously sustained the denial of [his] reapplication for privileges." Alternatively, Pardo asks this court to reverse the decision of the trial court "with respect to whether the [appeal] [b]oard complied with its obligations under the [b]ylaws," and remand the matter to the appeal board for further consideration of his application.

For reasons we explain, we conclude the governing administrative bodies of UCSDMC did not violate the bylaws of UCSDMC, Pardo received a fair hearing and

substantial evidence supports the decision of the appeal board affirming the JRC's unanimous decision denying Pardo's reappointment application. We thus affirm the judgment for UCSDMC.

FACTUAL AND PROCEDURAL BACKGROUND¹

A. The Administrative Record

Pardo filed a motion in this court to add to the appellate record the exhibits lodged by the parties and considered by the trial court in his petition for writ of mandate. The exhibits include: the transcripts of the JRC hearing (exhibit 1); the medical staff exhibits (exhibit 2); Pardo's own exhibits (exhibit 3); procedural rulings of the hearing officer (exhibit 4); questions submitted to the parties by the appeal board in advance of the hearing (exhibit 5); the transcript of argument before the appeal board (exhibit 6); the appeal board's decision (exhibit 7); and the JRC's decision (exhibit 8).

UCSDMC filed a limited opposition to Pardo's motion. UCSDMC noted that Pardo did not include exhibit 37 in the medical staff exhibits, and asked this court to supplement the record to include that exhibit. UCSDMC also objected to Pardo's submission of the binder labeled "Volume 2" lodged as part of the medical staff exhibits in connection with the hearing before the JRC. UCSDMC claimed a redacted version of

¹ As discussed *post*, under the substantial evidence standard of review we examine all evidence in the administrative record and view that evidence in the light most favorable to the judgment, resolving all conflicts in the evidence and drawing all inferences in support of the judgment. (See *Young v. Gannon* (2002) 97 Cal.App.4th 209, 225; *Taylor Bus Service, Inc. v. San Diego Bd. of Education* (1987) 195 Cal.App.3d 1331, 1340.)

Volume 2 was actually submitted to the JRC, and asked this court to replace the unredacted version of Volume 2 with the redacted version.

Pardo has not opposed UCSDMC's limited opposition. As such, we grant Pardo's motion to add to the record the exhibits used by the parties in the administrative proceedings. We further grant UCSDMC's limited opposition and accompanying motion to include in the record exhibit 37 and the redacted version of Volume 2 in lieu of the volume submitted by Pardo.

B. The Parties

Pardo is a radiation oncologist. He was appointed to the medical staff of the UCSDMC in 1999, and reappointed in 2000 and 2002.

The Regents is a statewide administrative agency, administered by its Board of Regents, which derives its powers from the California Constitution. (Cal. Const., art. IX, § 9(a).) It operates the University of California campuses, including the University of California, San Diego (UCSD) and the UCSDMC, which is the primary teaching hospital of the UCSD School of Medicine.

The medical staff executive committee (MSEC) governs the medical staff of, and establishes and monitors clinical performance, patient safety and quality of care efforts at, the UCSDMC. The MSEC is guided by the medical staff bylaws (bylaws) and various other rules and regulations.

C. The Ad Hoc Committee's Investigation and Decision to Deny Reappointment

In early August 2003, Dr. William G. Bradley, Jr., M.D., then-chairman of the department of radiology, notified Pardo that Pardo's performance was "beneath

department expectations.' " Bradley informed Pardo that unless he made " 'significant and sustained improvement during the next three months,' " the department would " 'initiate the process of corrective action' " against him. Pardo's inadequate performance was noted in three specific areas: " 'standards of performance' (e.g., 'competence and practice')," " 'administrative responsibilities' and 'communication and professional style.' " "

In the months following, problems with Pardo's performance resurfaced. In early February 2004, then-division chief of radiation oncology Dr. Steven Seagren, M.D., prepared a memorandum to Bradley recommending the department proceed with a disciplinary action against Pardo and his dismissal from the department. In Seagren's opinion, further counseling and monitoring of Pardo would not correct the deficiencies in Pardo's performance.

In October 2004, Bradley prepared a memorandum to the credentials committee of UCSDMC recommending that it deny Pardo's application for reappointment to the medical staff and initiate a formal corrective action investigation as required by the bylaws. Bradley presented more than three dozen instances "of clinical care considered below the standard of care in the community and/or unprofessional conduct" that occurred since Pardo's last reappointment in 2002.

In response, the MSEC met in closed session and decided to refer the reappointment recommendation back to the credentials committee for investigation of Pardo as provided under the bylaws. An ad hoc committee was formed to conduct the investigation. That committee met on numerous occasions, interviewing referring

physicians, physician colleagues and supervisors in radiation oncology and radiation oncology staff. The ad hoc committee also met with Pardo in the beginning of its investigation and reviewed voluminous materials he submitted in connection with its investigation, including Pardo's 205-page response to the allegations against him. The ad hoc committee also sought and considered the input and report of an independent expert reviewer, Dr. Oscar Streeter, M.D., associate professor of clinical radiation oncology at USC Keck School of Medicine, and Pardo's 89-page response to that expert's report.

In late February 2006, after a thorough investigation that lasted about 16 months, the ad hoc committee issued a seven-page report setting forth its findings, conclusions and recommendations regarding Pardo's performance. The report stated in part:

"The *ad hoc* committee recommends that Dr. Pardo's application for reappointment as a member of the medical staff of [UCSDMC] be denied. The vast majority of reported allegations have been corroborated by multiple witnesses, and these allegations represent only a sample of inappropriate medical activities and behaviors. Dr. Pardo does not have the confidence of other physicians in the medical center, nor does he have the confidence of the Radiation Oncology Staff. Discussion with referring physicians, fellow Radiation Oncologists, and our expert witness reveals a pattern of careless, sloppy medical care. This has resulted in many 'near misses[,] as well as a few 'direct hits' (harm to patients). In addition, UCSD practitioners believe his knowledge and judgment to be poor, and his practice to be out of the mainstream of modern Radiation Oncology.

"Behaviorally, [Pardo] exhibits a pattern of tardiness, poor and late record keeping, and incorrect and sloppy documentation. This behavior increases the likelihood of medical errors, and has a debilitating effect on clinic efficiency. Further, Dr. Pardo is often angry, defensive, and deceitful when questioned or criticized. This behavior is damaging to the clinic morale, and is antithetical to the collegial nature of our profession. Dr. Pardo consistently falls far below accepted standards with regard to medical care and professional behavior. His medical care and behavior are unbecoming of a UCSD Medical Staff member."

The ad hoc committee also investigated Pardo's charge that Seagren was retaliating against him because Pardo complained about the age of some of the equipment used in the department and the number of breakdowns it experienced. As allowed by the bylaws, the ad hoc committee retained an expert, Dr. William Wara, M.D., professor and chair of the department of radiation oncology at UCSF Medical Center, to review Pardo's patient safety concerns. Wara's report stated the equipment used at UCSDMC was old, but not unsafe, as Pardo had alleged, and noted there were no significant delays in patient treatment because of equipment failures.

The ad hoc committee also investigated Pardo's retaliation claim by interviewing various members of the department. The report noted these interviews did not support Pardo's contention that Seagren created a hostile and antagonistic work environment for Pardo, but instead corroborated concerns about Pardo's performance. The ad hoc committee thus determined, based on the weight of evidence before it, that the actions towards Pardo "relate[d] to legitimate concerns regarding [his] performance."

D. The MSEC Unanimously Adopts the Ad Hoc Committee's Recommendation to Deny Pardo's Reappointment Application

The MSEC met in late February 2006 in closed session to consider Pardo's reappointment application and the ad hoc committee's investigation and report concerning Pardo. The MSEC voted unanimously to uphold the recommendation of the ad hoc committee denying Pardo's application for reappointment as a member of the medical staff of UCSDMC. In response, Pardo requested a hearing as provided under the bylaws.

The MSEC reconvened in May 2006. The MSEC discussed at that meeting adding two additional cases to the notice of charges against Pardo. Although the ad hoc committee had not reviewed the two new cases to be added, they were reviewed by two doctors who concluded Pardo's conduct was "grossly below the standard of care." The MSEC also delegated authority to the chief of staff, Dr. Gene Kallenberg, M.D., to modify the "Notice of Charges (e.g., add new cases, delete cases or modify the current allegations)" against Pardo as new information became available.

Because a quorum of the MSEC was not present at the May 2006 meeting, the members present agreed to submit their proposals to all members of the MSEC for e-mail vote.² After the meeting, the voting members of the MSEC approved the proposals. Thereafter, Kallenberg mailed Pardo an amended notice of charges, as authorized by the

² As discussed *post*, Pardo claims the e-mail ballot of the MSEC violated the bylaws and his due process rights.

MSEC. The charges against Pardo were further amended in December 2006 by legal counsel of the MSEC.

E. The JRC Unanimously Decides the MSEC Satisfied its Burden to Show the Denial of Dr. Pardo's Reappointment Application Was Reasonable and Warranted

The MSEC appointed a JRC to hear and decide Pardo's challenge to the decision of the MSEC denying his application for reappointment. Kallenberg designated Cary W. Miller, an attorney, as the hearing officer to preside over the JRC proceedings. After voir dire, Pardo's legal counsel accepted Miller without objection.

The MSEC initially appointed David Ward, M.D., Reid Abrams, M.D., Ruth Grobstein, M.D., Caroline Day, M.D., and Greg Maynard, M.D., as members and alternates of the JRC for the Pardo proceeding. Like Pardo, Grobstein was a radiation oncologist. Grobstein was the only constituent of the JRC that was not a member of the medical staff of UCSDMC. Abrams was later dismissed from the JRC because he had sat on the MSEC when it made the decision regarding Pardo. Colleen Buono, M.D., replaced Abrams. The remaining members of the JRC were approved by both parties following voir dire at a pre-hearing conference held in mid-August 2006. Ward, Buono and Grobstein served as regular members of the JRC throughout the hearing, and Day and Maynard served as alternates. In early November 2006, Day was excused from the JRC due to her maternity leave. The hearing officer allowed Maynard, the sole

remaining alternate, to participate in the JRC deliberations, although he possessed no voting rights.³

The JRC hearing commenced in late September 2006, consisted of 14 sessions and concluded in late April 2007. All members of the JRC were present throughout the hearing and deliberations, which concluded in late May 2007. The MSEC called 10 witnesses in its case-in-chief, and one rebuttal witness; Pardo called seven witnesses and testified on his own behalf. The parties also introduced voluminous exhibits during the course of the JRC hearing.

The JRC issued a 17-page decision in late June 2007, which concluded:

"The JRC unanimously decides that the MSEC met its burden of persuading the JRC by a preponderance of the evidence that its decision to deny Dr. Pardo's application for reappointment to the medical staff was reasonable and warranted. This decision is based primarily on the JRC's findings with regard to the patient care cases (TW; EB; ST; FC; SS; RG; MD; AM; SG) that demonstrate multiple episodes of carelessness and substandard care on the part of Dr. Pardo. Dr. Pardo's carelessness is further reflected in the 'Radiation Safety' matter. The JRC is also concerned with Dr. Pardo's recurring after-the-fact justifications of his defense positions (TW; EB; ST; FC; RG; MD; Radiation Safety) even to the extent of changing his testimony and record entries. This calls into question Dr. Pardo's credibility and professional integrity. The JRC is also concerned

³ Pardo has challenged the hearing officer's decision to allow Maynard to participate in the deliberations. We address this claim of error *post*.

with Dr. Pardo's inability to get along with his colleagues and staff in the workplace although these charges do not serve as basis for this decision."

In its decision, the JRC reviewed 11 cases where the MSEC claimed Pardo's clinical care fell below the standard of care. The JRC set forth the initials of each patient, the charge and supporting evidence proffered by the MSEC, Pardo's defense and its conclusion. The JRC unanimously concluded the MSEC met its burden of proof with respect to the charges involving the following individuals: TW, EB, ST, FC, SS, RG, AM and SG; a majority of JRC agreed the MSEC met its burden to show Pardo provided substandard care to patient MD; and the JRC unanimously found the MSEC did *not* meet its burden with respect to the charges involving patients DB and WS.

The JRC also found the MSEC met its burden to show Pardo did not satisfy administrative requirements in timely preparing the medical records of two patients (SD and PP), and met its burden of proof in one instance, but not in another, in establishing Pardo failed to arrange for properly supervised care of his patients when he was not personally available.

In response to the charges by the MSEC that Pardo did not work cooperatively with medical staff members, staff and hospital administration, the JRC considered a series of incidents involving Pardo and his patients and found that in several of those instances the MSEC did not carry its burden to establish these charges, or that the incidents themselves did not rise to the level of seriousness to be considered for reappointment decisions. The JRC agreed with Pardo that in one instance, where various members of the radiation oncology staff complained about Pardo's performance in a

memorandum to Seagren, the members were not competent to evaluate Pardo's clinical performance because none of the individuals who signed the memorandum were physicians. However, the JRC did find the memorandum "corroborates the types of disruptive behaviors that were proved by the MSEC during the hearing."

The JRC also considered Pardo's claim the MSEC deprived him of procedural due process when it (1) unanimously upheld the recommendation of the ad hoc committee to deny his application for reappointment without giving him an opportunity to meet personally with the MSEC and discuss the charges against him, as he had been advised, and (2) approved the notice of hearing and notice of charges by e-mail vote of its members.

As to Pardo's first claim, the JRC found Pardo was not interviewed by the ad hoc committee regarding the specific charges brought against him by the MSEC before the ad hoc committee issued its February 2006 report. However, the JRC found Pardo was allowed to submit voluminous written materials to the ad hoc committee, the committee in fact reviewed those materials, the bylaws did not require the ad hoc committee to interview Pardo and Pardo was afforded adequate due process.

As to his next claim, the JRC referenced Kallenberg's testimony that on occasion members of the MSEC voted by e-mail when the MSEC did not have a quorum at its meeting. The JRC also considered Pardo's testimony, the bylaws, the minutes of the February and May 2006 MSEC meetings and concluded (1) the MSEC had properly voted in February 2006 to uphold the recommendations of the ad hoc committee to deny Pardo's application for reappointment and (2) the bylaws authorized Kallenberg, as chief

of staff, to issue the notice of hearing and notice of charges without obtaining approval of the MSEC, and thus the issue of whether the MSEC had a quorum at the May 2006 was irrelevant on that issue.

F. Administrative Appeal of the JRC Decision

Pardo timely appealed the JRC decision, as was his right under the bylaws. The MSEC appointed the appeal board, comprised of John C. Drummond, M.D., chair, Christine B. Miller, M.D., and Lisa Stellwagen, M.D. Pardo, the MSEC *and* the appeal board (as permitted under the bylaws) each retained legal counsel.

The parties each submitted appeal briefs and "other writings" for the appeal board to consider. In preparation for the hearing, the appeal board provided the parties with a list of questions to assist them and the appeal board at oral argument. As we discuss *post*, some of the questions referenced portions of Pardo's appeal brief, and requested additional information, citations to the administrative record and/or clarification on issues he raised, while others asked both parties specific questions regarding claims of error alleged by Pardo.

The oral argument before the appeal board took place in late February 2008, and lasted about three hours. During the argument, counsel for both parties addressed the issues raised in the questions submitted by the appeal board in advance of the hearing. In mid-March 2008, the appeal board issued an 11-page decision affirming in its entirety the June 2007 decision of the JRC.

G. Petition for Writ of Mandate

Pardo filed a petition for writ of mandate in May 2008. Pardo asked the trial court to vacate the decision of the appeal board affirming the ruling of the JRC denying Pardo's application for reappointment, and to direct the UCSDMC to accept his application for reappointment and restore all the rights and privileges he previously enjoyed.

Pardo's writ claimed (1) the appeal board's decision was "arbitrary and capricious, and in violation of its obligations under the [bylaws]" because the appeal board did not exercise independent judgment to consider and resolve the questions it posed to both parties before oral argument, including whether there was a systematic attempt to remove Pardo based on the evidence he submitted that he claims was "simply ignored" by the appeal board "in its rubber stamping of the JRC decision" and (2) the appeal board's decision was unreasonable and arbitrary because Pardo did not receive a fair hearing in that "[a] there was no substantial evidence to support the findings of the JRC decision; [b] the Ad Hoc Committee failed to meet with Dr. Pardo as promised prior to filing its report recommending his reappointment be denied; and [c] the Hearing Officer erroneously permitted a non-voting member of the JRC panel to participate in deliberations."

Pardo's writ petition came on for hearing in late September 2008. After argument, the court took the matter under submission and subsequently issued a detailed, six-page minute order analyzing each of Pardo's claims of error. In denying the petition, the trial court found that the procedures taken by UCSDMC were in "substantial compliance" with the bylaws and that Pardo "was not denied his right to a fair hearing." The trial

court also found substantial evidence supported the decision of the appeal board affirming the JRC's denial of Pardo's application for reappointment.

DISCUSSION

A. Standards of Review

Code of Civil Procedure section 1094.5 sets forth the procedure for judicial review of an order or a decision by an administrative agency. (*Bixby v. Pierno* (1971) 4 Cal.3d 130, 137.) Subdivision (b) of Code of Civil Procedure section 1094.5 states that on a petition for a writ of mandate, a court's inquiry should extend, among other issues, to "whether there was any prejudicial abuse of discretion," which it defines to include instances where the administrative agency "has not proceeded in the manner required by law," the administrative order or decision "is not supported by the findings, or the findings are not supported by the evidence."

Under article IX, section 9 of the California Constitution, the Regents of the University of California, which operates the UCSDMC, constitutes a "public trust" possessing "full powers of organization and government" and "all the powers necessary or convenient for the effective administration of its trust" Where a "statewide agency is delegated quasi-judicial power by the Constitution, the reviewing court is limited to determining whether there was substantial evidence supporting the agency's decision." (*Ishimatsu v. Regents of University of California* (1968) 266 Cal.App.2d 854, 862, fn. omitted.)

As to the function of this court, like the trial court before us we review the entire administrative record to determine whether the agency's findings are supported by

substantial evidence. (*JKH Enterprises, Inc. v. Department of Industrial Relations* (2006) 142 Cal.App.4th 1046, 1058; *MHC Operating Limited Partnership v. City of San Jose* (2003) 106 Cal.App.4th 204, 217-220.) Substantial evidence is defined as evidence of " ' ' 'ponderable legal significance . . . reasonable in nature, credible, and of solid value' " ' [citation] [, and] ' "relevant evidence that a reasonable mind might accept as adequate to support a conclusion." ' ' " (*County of San Diego v. Assessment Appeals Bd. No. 2* (1983) 148 Cal.App.3d 548, 555; *Hosford v. State Personnel Bd.* (1977) 74 Cal.App.3d 302, 307.)

In making this determination, we examine all relevant evidence in the administrative record and view that evidence in the light most favorable to the judgment, resolving all conflicts in the evidence and drawing all inferences in support of the judgment. (*Young v. Gannon, supra*, 97 Cal.App.4th at p. 225; *Taylor Bus Service, Inc. v. San Diego Bd. of Education, supra*, 195 Cal.App.3d at p. 1340.) The burden is on the appellant to prove there was an abuse of discretion through the issuance of a decision that was unsupported by substantial evidence. (*Young v. Gannon, supra*, 97 Cal.App.4th at p. 225.) Only if no reasonable person could reach the conclusion reached by the administrative agency, based on the entire record before it, can the court conclude that the agency's findings are not supported by substantial evidence. (*BreakZone Billiards v. City of Torrance* (2000) 81 Cal.App.4th 1205, 1244; *Oskooi v. Fountain Valley Regional Hospital* (1996) 42 Cal.App.4th 233, 243 [a reviewing court must uphold administrative findings unless they are so lacking in evidentiary support as to render them unreasonable].)

We are not bound, however, by the findings of the trial court or the administrative agency to the extent they constitute conclusions of law. (*Purdy v. Teachers' Retirement Board* (1980) 113 Cal.App.3d 942, 949; see also *Antelope Valley Press v. Poizner* (2008) 162 Cal.App.4th 839, 851 ["The nature of an issue on appeal determines the appellate court's standard of review in an administrative mandamus case," and thus "[q]uestions of law . . . are given a de novo review"].)

Whether hearing procedures complied with relevant statutes and regulations, or with an agency's own policies or procedures, requires application of the rules of statutory interpretation and construction; in such cases, "The appropriate mode of review . . . is one in which the judiciary, although taking ultimate responsibility for the construction of the statute, accords great weight and respect to the administrative construction.

[Citation.]" (*Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 12; see also *Aguilar v. Association for Retarded Citizens* (1991) 234 Cal.App.3d 21, 28 ["As a general rule, the courts defer to the agency charged with enforcing a regulation when interpreting a regulation because the agency possesses expertise in the subject area," although "final responsibility for interpreting a statute or regulation rests with the courts and a court will not accept an agency interpretation which is clearly erroneous or unreasonable."])

Moreover, in considering whether Pardo was deprived of a fair hearing, the trial court's foundational findings of fact are conclusive if supported by substantial evidence, but the ultimate question of whether in view of those factual findings the proceedings before the various administrative bodies was procedurally unfair is a question of law

which we review de novo. (See *Clark v. City of Hermosa Beach* (1996) 48 Cal.App.4th 1152, 1169-1170.)

B. *Due Process Claims*

Pardo claims he was denied his due process right to a fair hearing based on "several incidents" that took place during various stages of the administrative process. We now turn to an examination of those "incidents," starting with the ad hoc committee investigation.

1. *Ad Hoc Committee*

Pardo claims the ad hoc committee violated the bylaws when it informed him the committee intended to interview him in connection with its investigation but later concluded its investigation without interviewing him.⁴ Pardo relies on article IX, section 6 of the bylaws to support this claim of error. This provision provides in part:

"2. If the MSEC concludes a formal investigation is warranted, it shall direct an investigation to be undertaken and the member [e.g., Pardo] shall be informed in writing of the investigation and of the allegations that give rise to the investigation. The MSEC may conduct the investigation itself or may assign the task to an . . . ad hoc committee to be appointed by the Chief of Staff. The investigating body should not include individuals

⁴ Relying on *Westlake Community Hosp. v. Superior Court* (1976) 17 Cal.3d 465, 476-477, UCSDMC argues Pardo did not raise this issue during the JRC and appeal board hearings, and as such, the issue is forfeited. We disagree. We note the decision of the JRC addressed this very issue when it concluded (1) Pardo was afforded due process when the ad hoc committee reviewed the voluminous written materials Pardo submitted in connection with its investigation, (2) the bylaws gave the ad hoc committee the discretion whether to interview Pardo and (3) the committee acted in good faith.

with a conflict of interest Additionally, the investigating person or body may, but is not required to, engage the services of one or more outside reviewers as deemed appropriate or helpful in light of such circumstances. If the investigation is delegated to an officer or [a] committee other than the MSEC, such officer or committee shall proceed with the investigation in a prompt manner and shall forward a written report of the investigation to the MSEC as soon as practicable. The report may include recommendations for appropriate corrective action.

"3. Prior to any adverse action being approved, the MSEC shall assure that the member was given an opportunity to provide information *in a manner and upon such terms as the MSEC, investigating body, or reviewing committee deems appropriate. The investigating body or reviewing body may, but is not obligated to, interview persons involved*" (Italics added.)

In denying Pardo's petition for writ of mandate, the trial court rejected his claim the ad hoc committee violated the bylaws when it did not personally interview him before it completed its investigation and recommended denying his application for reappointment.

Based on our independent review, we conclude article IX, section 6 of the bylaws did not *require* the ad hoc committee to interview Pardo (or any other witness) before concluding its investigation on behalf of the MSEC. Instead, the bylaws clearly gave the ad hoc committee broad discretion to determine how to conduct its investigation, subject to Pardo's right to provide information to the committee "in a manner and upon such terms" as it deemed appropriate.

Here, the record shows the ad hoc committee met with Pardo on one occasion. The committee also interviewed various other witnesses in connection with its investigation, including referring physicians, physician colleagues, supervisors in radiation oncology and radiation oncology staff (e.g., the clinic manager, administrative support staff, physicists, dosimetrists and radiation therapists).

Moreover, the ad hoc committee reviewed Pardo's 204-page response to the various allegations against him, and after the committee provided him with the report of the expert it had retained in connection with the investigation, he submitted a supplemental 89-page response, which the committee also considered before denying his application for reappointment. The record therefore shows the ad hoc committee gave Pardo the opportunity to provide information to the committee in response to the charges, Pardo provided voluminous information and the committee considered that information in making its recommendation to deny his application for reappointment.

We thus conclude, as did the trial court, that the ad hoc committee did not violate the bylaws, or Pardo's right to due process, when it concluded its investigation without personally interviewing Pardo. (See *Sommerfield v. Helmick* (1997) 57 Cal.App.4th 315, 320 [procedural due process in an administrative hearing "is a flexible concept that does not establish universally applicable procedures for the resolution of all types of issues," and "While the types of procedures which are sufficient are variable with the type of action, minimum due process requires some form of notice and an opportunity to respond."])

2. The MSEC E-Mail Vote

At the May 2006 meeting, the MSEC considered adding additional⁵ charges against Pardo that were not reviewed by the ad hoc committee. In addition, the MSEC recommended delegating authority to Kallenberg, the chief of staff, to allow him to modify the "Notice of Charges (i.e., add new cases, delete cases or modify the current allegations)" against Pardo as new information became available.

Because a quorum was not present at the meeting, the MSEC members voted by e-mail and approved the proposals made by members of the MSEC during its May 2006 meeting. Thereafter, Kallenberg sent Pardo by certified mail an amended notice of charges, as authorized by the MSEC. The amended charges "and a later amendment dated December 12, 2006, from . . . counsel for the MSEC, set forth the charges upon which the [JRC] hearing was to be based."

Pardo claims the MSEC e-mail vote following the May 2006 meeting violated the bylaws because at that time they were silent on whether such a procedure was allowed. He further claims his due process rights were violated because the MSEC was unable to produce a copy of the e-mail and any attachments that the voting members (allegedly) received in connection with their e-mail vote. As a result, Pardo argues the MSEC was unable to establish the e-mail vote by its members comported with due process.

⁵ Pardo claims the MSEC added three additional charges against him that the ad hoc committee had not reviewed or investigated, while UCSDMC states the MSEC actually added two additional cases to the notice of charges against Pardo.

This issue was litigated in the JRC hearing. The JRC concluded the MSEC's e-mail vote was not improper. The JRC relied on Kallenberg's testimony during the hearing that the MSEC "occasionally used" e-mail to vote, and found the bylaws, in any event, authorized Kallenberg to issue the notice of hearing and amended notice of charges *without* obtaining approval from the MSEC.⁶ The MSEC thus determined the notice of hearing and notice of charges "were issued appropriately whether or not the MSEC acted without a quorum" at the May 2006 meeting.

In denying his writ petition, the trial court also rejected Pardo's claim the e-mail vote violated the bylaws and his due process rights. The trial court found an e-mail vote not involving "corrective action" (e.g., the reduction, modification, suspension or revocation of privileges, as provided in article IX, section 7 of the bylaws) was "neither authorized nor prohibited" by the bylaws. The trial court found a quorum of the MSEC was present during the February 2006 meeting when the MSEC unanimously voted to take "corrective action" against Pardo and uphold the recommendation of the ad hoc committee to deny his application for reappointment. The trial court likewise relied on Kallenberg's testimony in the JRC that the "MSEC voted by e-mail on occasion and on

⁶ The JRC decision references article IX, section 4, subdivision (C). However, it appears this issue is actually governed by article X, section 4, subdivision (C) of the bylaws, entitled "Notice of Charges," inasmuch as there is no subdivision (C) in article IX, section 4. Article X, section 4, subdivision (C), provides: "Together with the special notice stating the place, time and date of the hearing, the Chief of Staff [e.g., Kallenberg] shall state clearly and concisely in writing the reasons for the adverse proposed action taken or recommended, including the acts or omissions with which the member is charged and a list of the medical record numbers in question A supplemental notice may be issued at any time, provided the member is given sufficient time to prepare to respond."

these occasions the absent members would be supplied with the materials they would have received at the hearing," and that the May 2006 e-mail vote involved only minor procedural items.

The trial court thus ruled:

"Given that there was a quorum present at the time of the critical February 28, 2006, vote, the silence of the Bylaws on voting by e-mail for non-corrective action decisions, Dr. Kallenberg's testimony the MSEC voted by e-mail 'on occasion' and Dr. Kallenberg's authority under the Bylaws, Petitioner fails to establish how the e-mail vote was in violation of the Bylaws and how the e-mail vote denied him due process and/or a fair and impartial hearing. In addition, the Bylaws specifically allow for a supplemental notice, provided the member is given sufficient time to prepare to respond. Petitioner does not argue he was not provided sufficient time to prepare to respond."

We need not decide whether, in light of article X, section 4, subdivision (C), the bylaws required a quorum of the MSEC to approve the notice of hearing and amended notice of charges, and if so, whether the bylaws allowed the members of the MSEC to

cast their vote by e-mail.⁷ Instead, we conclude Pardo did not show he was prejudiced in any way by the e-mail vote of the members of the MSEC following the May 2006 meeting.

Indeed, Pardo does not dispute he received notice of the amended charges as required under the bylaws, nor does he dispute he possessed sufficient time to respond meaningfully to those charges. In addition, the record shows that the JRC hearing took place on 14 separate occasions between September 2009 and April 2007; that all members of the JRC were present throughout the hearing and deliberations; that the MSEC called 10 witnesses in its case in chief and one rebuttal witness; and that Pardo called seven witnesses and also testified in his defense. Thus, we conclude that even if the MSEC somehow violated Pardo's right to due process when it allowed its members to cast their votes by e-mail, he has failed to show he suffered any resulting prejudice. (See *Hinrichs v. County of Orange* (2004) 125 Cal.App.4th 921, 928 ["[P]rocedural due process violations, even if proved, are subject to a harmless error analysis."])

⁷ Like the trial court, we note that article X, section 4, subdivision (C), allowed supplemental notice of charges to be "issued at any time" against a member as long as the member has sufficient time to respond. Here, the MSEC supplemented the notice of charges against Pardo in December 2006, *after* the JRC hearing was underway. Pardo, however, has *not* challenged that supplemental notice, nor has he complained that such notice, which issued without a quorum of the MSEC, violated the bylaws or his due process rights. Although we conclude Pardo was not prejudiced by the e-mail vote, his interpretation of the bylaws appears to make little sense: on the one hand, he argues the bylaws required that the MSEC approve by a vote of a quorum of its members the notice of hearing and notice of charges; on the other hand, he did not challenge the provision in the bylaws that allowed a supplemental notice of charges to be "issued at any time" without a vote by a quorum of the MSEC.

3. Alleged Error Based on the JRC Panel Members' Access to Certain Documents in the JRC Hearing

Pardo next claims his due process rights were violated because at least one of the panel members of the JRC "browsed through, and had access to, unredacted records containing prejudicial material outside the scope of the Amended Notice of Charges" that were the subject of the hearing. Pardo also claims the unredacted documents were available to the panel members during their deliberations, and the panel's "exposure . . . to this inadmissible evidence renders it impossible to determine the basis on which the panel reached its decision."

Pardo's briefs omit key background information on this issue. Our review of the record shows that at the outset of the JRC hearing, each of the panel members received exhibit notebooks containing, among other things, *all* of the medical staff exhibits *including* the unredacted documents. The JRC hearing officer then instructed the panel members to use and read only those documents that were actually used by counsel and admitted into evidence. Thus, each of the panel members was given a copy of the unredacted documents in their exhibit notebooks.

The issue next arose during Pardo's cross-examination of an MSEC expert in the November 2006 evidentiary hearing. Pardo's counsel asked the expert whether he had reviewed certain documents in the exhibit notebook that Pardo now claims were

prejudicial and should have been redacted.⁸ The record shows a *panel member* interrupted the cross-examination and inquired whether the panel should review those documents. After discussion between the parties and the hearing officer, the hearing officer instructed the panel members not to review the unredacted documents unless and until instructed otherwise.

At the beginning of the January 2007 JRC evidentiary hearing, the hearing officer explained to the panel members that they were about to hear testimony involving documents in their exhibit notebooks that were not part of the charges against Pardo, but which were nonetheless relevant to the process and procedures used by the medical staff in investigating Pardo. The hearing officer further explained that he would give the panel members a limiting instruction when such documents were discussed, and that at the conclusion of such testimony counsel intended to remove or redact some of these documents from the panel members' exhibit notebooks. The record shows the JRC panel members subsequently received replacement exhibits (with redactions) in March 2007, *before* they began their deliberations.

According to Pardo, at some point after the January 2007 hearing, it came to the attention of the hearing officer that at least one panel member had looked at the unredacted documents that had been removed from the exhibit notebooks. As noted,

⁸ UCSDMC argues that Pardo cannot complain about a panel member's review of the unredacted documents when it was *his* counsel that was using them in the evidentiary hearing. In light of our conclusion, *post*, we need not resolve whether the conduct of Pardo's legal counsel estopped him from raising this issue on appeal. (See e.g., *County of Contra Costa v. Humore, Inc.* (1996) 45 Cal.App.4th 1335, 1343-1344.)

Pardo also claims the unredacted documents were available to the panel during its deliberations.

In rejecting this claim, the trial court found it "undisputed" that "the unredacted documents were removed prior to the JRC's deliberations," that Pardo failed "to establish any member of the JRC actually reviewed any of these allegedly prejudicial and inflammatory comments or that any member relied on these comments in rendering his or her decision," and that he failed "to establish how the JRC's brief access to the unredacted exhibits deprived [him] of a fair hearing."⁹

We conclude Pardo has not proffered any evidence from the record to show his due process rights were violated in connection with this issue. For example, he has not identified which panel member(s) reviewed the documents, what documents were reviewed and when, and whether or not the documents reviewed were the same (unredacted) documents that were used by the parties (including Pardo) during the course of the evidentiary hearing.

Moreover, the fact the panel members at the outset of the lengthy evidentiary hearing were given the unredacted documents in their exhibit notebooks further undermines his due process claim. Although the hearing officer instructed the panel members not to review the documents in the exhibit notebooks unless and until they were told to do so, the fact is the panel was in possession of the documents for nearly the entire evidentiary hearing, which lasted several months. There also is no evidence in the record

⁹ In his reply brief, Pardo does not dispute the unredacted documents were in fact removed from the panel members' notebooks before they began deliberations.

showing that Pardo objected to giving the panel members the unredacted documents at the outset of the hearing, and in fact, the record shows Pardo's counsel referenced some of those documents during his cross-examination of the MSEC's medical expert.

Finally, as to Pardo's contention it is "impossible" to tell whether the panel used and considered the unredacted documents in making its findings and reaching its decision, we note the JRC's decision includes detailed findings, the evidence it relied on to support those findings *and* the source of that evidence.¹⁰ In contrast, as we have noted Pardo is unable to cite to any evidence in the record showing the JRC panel members used or relied on any information from the unredacted documents in reaching their decision. We thus conclude Pardo did not establish a due process violation in connection with this issue.

4. The JRC Hearing Officer's Decision to Allow Maynard to Participate in the JRC Deliberations

Pardo also claims he was denied due process when the hearing officer allowed Maynard, the alternate JRC panel member, to participate in deliberations even though he could not vote.¹¹

Briefly, Maynard was one of two alternates approved by the parties following voir dire at a pre-hearing conference held in August 2006. The other alternate, Day, withdrew from the JRC hearing in November 2006. The record shows Maynard was present for all

¹⁰ As discussed *post*, Pardo also has challenged the findings of the JRC for lack of substantial evidence.

¹¹ Pardo in his opening brief initially claimed that Maynard did in fact vote. However, it is clear from the record and from other references in the parties' briefs that while Maynard participated in the deliberations, he did *not* vote in the JRC's decision.

of the 14 sessions of the JRC hearing and, along with the other panel members, actively participated in what the hearing officer described as an "intraprofessional collegial process" that allowed "professionals to reach decisions regarding their peers and colleagues."¹²

On February 15, 2007, the hearing officer issued a tentative decision to allow Maynard to participate in the JRC's deliberations even though he could not vote. The tentative notified the parties the decision would become final unless a party filed an opposition with legal authorities by February 23, 2007. On February 28, 2007, the hearing officer notified counsel that the tentative was unopposed and thus final. On March 7, 2007, Pardo filed a motion to exclude Maynard from deliberations, arguing Maynard's participation in the deliberations violated the bylaws and the "principles established by almost a century of statutory and case law."

During a hearing outside the presence of the JRC panel members, the hearing officer confirmed his tentative decision, and found:

"[W]ith the history of this issue as presented, I believe that the motion [of Pardo] to exclude is untimely. It came after I had made a ruling and had advised the Panel. So I would have to unring[] . . . that bell. [¶] And even if the motion were timely, I have read [Pardo's counsel's] authority in [his] brief [and agree] wholeheartedly with him that that states the law with regard to a jury trial in state court. But I don't believe it applies to a

¹² On this court's own motion, counsel was ordered to augment the record to include the original hearing transcript of March 22, 2007, where the hearing officer ruled outside the presence of the JRC panel members that Maynard could deliberate, but not vote, in the JRC proceeding.

judicial review hearing that is meant to be an intraprofessional collegial process to allow professionals to reach decisions regarding their peers and colleagues. [¶] And there are a lot of things about this process that are different than a jury trial. For instance, my right to participate in the deliberations and, if the Panel so requests, to actually write the opinion consistent with their decision and findings."

The parties agree the bylaws do not address this specific situation. However, Pardo claims on appeal, as he claimed in the proceedings below, that article X, section 4, subdivision (T), is instructive on this issue. That provision provides in part that if a hearing committee member is absent from any part of the proceedings, "the hearing will not proceed unless: (a) he or she is replaced by an alternate or (b) both parties stipulate, in writing, that it is acceptable for the absent member to review the transcript. If the parties so stipulate, he or she shall not be permitted to participate in the deliberations or the decision unless and until he or she has read the entire transcript of the portion of the hearing from which he or she was absent. If the Hearing Committee member is replaced by an alternate, the alternate will appear for all parts of the hearing but will not vote at the end, unless he or she is accepted by the parties and made a voting member of the hearing committee."

Reasoning by analogy, Pardo argues the requirement in article X, section 4, subdivision (T), that the parties "accept" the alternate before he or she can vote shows that the parties also were required to "accept" Maynard before he could participate in the JRC deliberations even if he did not have a vote. Pardo further argued below that the decision of the hearing officer was contrary to well-established rules prohibiting alternate

jurors to participate in deliberations in state court. Because Pardo claimed Maynard was hostile and aggressive in his questioning of Pardo and various witnesses during the JRC hearing, Pardo argued there was no way of knowing what influence Maynard had on his voting colleagues.

The trial court found Pardo was unable to establish he was deprived a fair hearing based on Maynard's participation in the JRC deliberations. The court rejected Pardo's argument article X, section 4, subdivision (T), applied by analogy to Maynard, and instead found the bylaws gave the hearing officer the " 'authority and discretion to make all rulings on questions that pertain to matters of law, procedure or admissibility of evidence that are raised prior to, during or after the hearing.' [Article X, Section 4(E).]"

The trial court also found the participation of Dr. Maynard in the deliberations did not violate the bylaws, Pardo was given the opportunity at the outset of the JRC hearing to voir dire Maynard and accepted him to the panel, the hearing officer's statement advising counsel the alternate(s) could vote with the panel *if* counsel stipulated was not dispositive on this issue because Maynard did not vote and Pardo did not timely provide the hearing officer with legal authority showing the hearing officer erred by allowing Maynard to participate in the deliberations and the authority Pardo did provide was inapplicable.

We conclude, as did the trial court, that article X, section 4, subdivision (T), of the bylaws does not apply to this issue because that provision deals with a panel member who is absent from a hearing. Here, the undisputed evidence in the record shows *all*

panel members—including Maynard—attended *all* 14 sessions of the JRC hearing. Thus, no panel member was absent within the meaning of this provision.

As the parties note, there is no one provision of the bylaws that governs the instant issue. However, the bylaws themselves provide they are to be interpreted to provide the "least burdensome level of formality in the hearing process," while still ensuring a member receives a fair hearing and due process. (See, e.g., article X, section 1, subdivision (a) [the hearing officer shall have the discretion "to create a hearing process that provides for the least burdensome level of formality in the process while still providing a fair review and to interpret these Bylaws in that light" and "to establish flexible procedures that do not create burdens that will discourage the Medical Staff and Governing Body from carrying out peer review"]; article X, section 4, subdivision (O) ["Formal judicial rules of evidence and procedure relating to the conduct of the hearing, examination of witnesses, and presentation of evidence shall *not* apply to a hearing conducted under this Article."] *italics added*.)

Along these same lines, the bylaws vest the hearing officer with broad authority and discretion to "make *all* rulings on questions that pertain to matters of law, procedure, or the admissibility of evidence that are raised prior to, during or after the hearing" (art. X, § 4, subd. (E), *italics added*); to "determine the order of or procedure for presenting evidence and argument during the hearing" (*ibid*); to "participate in the deliberations of the Hearing Committee and be a legal advisor to it" (*ibid*); and to "assure that all participants in the hearing have a reasonable opportunity to be heard and to present relevant oral and documentary evidence in an efficient and expeditious manner" (*ibid*).

Thus, the bylaws strike a balance between the informal procedures typical of an administrative proceeding, which the hearing officer before us aptly referred to as an "intraprofessional collegial process to allow professionals to reach decisions regarding their peers and colleagues," on the one hand, and a member's right to a fair hearing, on the other hand.

Here, the record shows Pardo was afforded due process protections in this quasi-judicial administrative proceeding. (See *Richardson v. Perales* (1971) 402 U.S. 389, 401 [91 S.Ct. 1420] [the protections of procedural due process apply to an administrative proceeding].) He received notice of the charges against him (see *Armstrong v. Manzo* (1965) 380 U.S. 545, 552 [85 S.Ct. 1187]; *Skelly v. State Personnel Bd.* (1975) 15 Cal.3d 194, 215); a meaningful opportunity to be heard in connection with those charges, as demonstrated by the fact the hearing lasted 14 sessions and spanned many months before an impartial panel of his contemporaries and a neutral hearing officer, all of whom Pardo voir dired before the hearing commenced (see *Bracy v. Gramley* (1997) 520 U.S. 899, 904-905 [117 S.Ct. 1793]; *Withrow v. Larkin* (1975) 421 U.S. 35, 46 [95 S.Ct. 1456]; *Bertch v. Social Welfare Dept.* (1955) 45 Cal.2d 524, 528, overruled on other grounds as stated in *Frink v. Prod* (1982) 31 Cal.3d 166, 180; *Nightlife Partners, Ltd. v City of Beverly Hills* (2003) 108 Cal.App.4th 81, 90); the opportunity to defend, present evidence and confront witnesses (see *Goldberg v. Kelly* (1970) 397 U.S. 254, 269-270 [90 S.Ct. 1011]; *Jennings v. Jones* (1985) 165 Cal.App.3d 1083, 1090); the right to be represented by counsel (see *Borror v. Department of Investment* (1971) 15 Cal.App.3d 531, 540); a decision that is based on the factual record developed during the lengthy evidentiary

hearing and that sets forth the factual and legal basis for the panel's determination of the various charges against him (see *Morrissey v. Brewer* (1972) 408 U.S. 471, 489 [92 S.Ct. 2593]; *Clark v. City of Hermosa Beach* (1996) 48 Cal.App.4th 1152, 1172); and the right to appeal the JRC decision to the appeal board and ultimately to the trial court (through a writ of administrative mandamus) and to this court. (See art. X, § 5 of the bylaws [setting forth the applicable provisions for an appeal from a decision of the panel members/hearing]; Code Civ. Proc., § 1094.5.)

In light of the due process protections Pardo was afforded, the informality of the procedures allowed under the bylaws, as demonstrated by the right of the hearing officer to participate in the deliberations of the panel members and be a legal advisor to them, the fact Maynard was an active participant throughout the JRC hearing, and the fact the hearing was an "intraprofessional collegial process," we decline to hold Pardo's due process rights were violated when the hearing officer allowed Maynard to participate in the panel's deliberations, even though Maynard did not have a right to vote.

Although Pardo *may* have correctly stated the law when he argued that alternate jurors in state trials are prohibited from participating in jury deliberations, like the hearing officer and trial court before us we agree this law does not apply here, in the administrative hearing process. (See *Blinder, Robinson & Co. v. Tom* (1986) 181 Cal.App.3d 283, 289, quoting *Dixon v. Love* (1977) 431 U.S. 105, 115 [97 S. Ct. 1723] [" '[P]rocedural due process in the administrative setting does not always require application of the judicial model.' "])

We also note that Pardo has been unable to cite to any legal authority that prohibits an alternate panel member in a quasi-judicial proceeding from participating in deliberations with other panel members despite not having a vote, nor has our independent research uncovered any such authority. While allowing an alternate panel member to participate in deliberations in a quasi-judicial administrative proceeding may not be common, under the facts here we are not prepared to find Pardo's due process rights were violated. (See *Sommerfield v. Helmick*, *supra*, 57 Cal.App.4th at p. 320.)¹³

C. Administrative Appeal of the JRC's Decision

Pardo argues the appeal board violated the bylaws in the manner in which it reviewed the JRC decision. Specifically, he argues the appeal board's decision demonstrates the appeal board "rubber stamp[ed]" the decision of the JRC because the appeal board's decision did not reference the parties' discussion at oral argument of the 15 questions posed by the board in advance of the argument.

The appeal board decision provided:

"1. There was substantial compliance with the procedures required by the [bylaws] in connection with the June 25, 2007 decision of the [JRC] of the UCSD[MC]; [¶] 2. The June 25, 2007 decision of the [JRC] was supported by evidence based upon the hearing record; and [¶] 3. The action taken by the [JRC] unanimously deciding that

¹³ Pardo notes in his brief the radiation oncologist on the JRC panel (who was voir dired by the parties) was wheelchair bound and on oxygen at the time of the hearing, and has since died. In light of the very lengthy hearing involving Pardo, if Maynard were ultimately called on to replace a voting member, his participation in the deliberations would have ensured they continue without disruption, in contrast to having the deliberations commence anew with Maynard's full participation.

the [MSEC] had met its burden of persuading the JRC by a preponderance of the evidence that its decision to deny Dr. Pardo's application for reappointment to the Medical Staff was reasonable and warranted, was neither arbitrary, unreasonable, nor capricious."

Based on the applicable standard of review provided under the bylaws, the appeal board, in "arriving at this decision and these findings," gave "great weight to the [JRC's] recommendations," did not act "arbitrarily or capriciously," and in accordance with the bylaws, "exercised its independent judgment in determining whether Dr. Pardo was afforded a fair hearing, whether the decision of the JRC denying Dr. Pardo's [a]pplication for [r]eappointment to the [m]edical [s]taff was reasonable and warranted, and whether any law, rule or policy relied upon by the JRC was unreasonable or unwarranted." The appeal board also stated in its decision that it "has not independently determined any findings of fact or conclusions different from the findings and conclusions of the [JRC]."

Like the trial court before us, we conclude the appeal board did not violate the bylaws in connection with its review of the JRC decision. First, contrary to Pardo's argument otherwise, the decision of the appeal board did in fact reference the oral argument of the parties, and stated its decision was partly based on that argument. Second, the decision correctly noted the appeal board was entitled to give "great weight" to the JRC's decision/recommendation. (See subd. (E)(c), § 5 of art. X [the appeal board shall give "great weight" to the decision/recommendation of the JRC].)

Third, the appeal board properly applied the "independent judgment" standard of review in determining (1) Pardo was afforded a fair hearing, (2) the JRC's decision was

reasonable and warranted and (3) the JRC did not rely on any "[b]ylaw, rule or policy" that was unreasonable or unwarranted in its decision. (See art. X, § 5, subd. (E)(c).)¹⁴

Fourth, the appeal board decision was in writing and set forth the reasons for its decision. (See art. X, § 5, subd. (E)(d) [the decision of the appeal board "shall be in writing" and "specify the reason for the actions taken"].) Fifth, because the decision provides it did not make any findings of fact different from the findings of the JRC, the bylaws did *not* require the appeal board to make findings, or to repeat the findings of the JRC and the conclusions based on such findings, in affirming the decision of the JRC. (See art. X, § 5, subd. E(c) ["The decision [of the appeal board] shall specify the reasons for the action taken and shall provide findings of fact and conclusions articulating the connection between the evidence produced at the hearing and appeal (if any), and the decision reached, *if* such findings and conclusions differ from those of the [JRC]."] (Italics added.)) Thus, it also follows the appeal board was not required to reference in its decision any findings (or conclusions derived from those findings) based on the parties' oral argument.

Finally, we disagree with Pardo's contention that the failure of the appeal board to discuss specifically the parties' responses to the 15 questions shows the appeal board

¹⁴ Although the appeal board applied the independent judgment standard of review, it appears the bylaws gave the appeal board the discretion to apply a more deferential standard (e.g., substantial evidence) in its review of the JRC decision. (See art. X, § 5, subd. (E)(c) [the appeal board "*may . . . exercise its independent judgment in determining whether a member was afforded a fair hearing, whether the decision is reasonable and warranted, and whether any Bylaw, rule or policy relied upon by the [JRC] is unreasonable or unwarranted.*" (Italics added.)

merely "rubber stamp[ed]" the JRC decision. To the contrary, the questions posed to the parties by the appeal board in advance of the hearing shows the board was keenly aware of Pardo's specific claims of error and diligently sought to focus the parties on those claims at the hearing.

Briefly, question 1 asked Pardo about his contention that Maynard's demeanor influenced the rest of the panel and prejudiced Pardo in light of his participation in the deliberations, and requested Pardo to provide citations to the record to back up this contention. Question 2, also addressed to Pardo, asked for citations to the record to support his contention the JRC panel was "hand picked" and he was prejudiced as a result. Question 3 asked Pardo for citations to the record that showed any member of the JRC panel behaved in such a way to show bias or negligently handled their responsibilities in the hearing process.

Question 4 asked both counsel about the facts in the record involving Pardo's care of patient AM. Question 5 sought information about the timing of the MSEC's decision denying Pardo's application for reappointment to the medical staff, and whether that timing was related to events in a separate lawsuit (that is not the subject of this appeal), as alleged by Pardo. Question 6 asked for clarification from both parties regarding whether Pardo in fact met at least once with the ad hoc committee.

Question 7 asked both parties whether Pardo had offered any rebuttal evidence regarding the charge against Pardo involving patient TW. Question 8, also directed at both parties, inquired whether "access to non-redacted records and exhibits cause[d] a significant JRC panel bias"; question 9 asked Pardo whether the hearing officer of the

JRC committed any procedural errors, and question 10 asked both parties whether the medical staff acted in a manner that was inconsistent with its written policies (e.g., the bylaws).

Questions 11, 14 and 15 were each addressed to Pardo. Question 11 asked whether he disputed the MSEC's assertion that an interview by the ad hoc committee was not required by the bylaws. Question 14 asked Pardo to identify evidence in the administrative record to support his claim he was subject to "systematic bias" at the UCSDMC. Question 15 asked whether any evidence existed in the record showing Pardo's colleagues did not follow standard practices of the department in connection with their concerns about his performance.

Finally, questions 12 and 13 were addressed to both parties. Question 12 involved the e-mail vote of the MSEC, and question 13 generally asked whether the hearing process substantially complied with the bylaws.

The probing nature of the questions generated by the appeal board in advance of the hearing, which were derived from the parties' appeal briefs among other sources, shows the appeal board was focused on Pardo's various claims of error, considered those claims and rejected them. We thus conclude the record does not support Pardo's contention the appeal board merely "rubber stamp[ed]" the decision of the JRC.¹⁵

¹⁵ We further note that at least with respect to the questions pertaining to whether Pardo was afforded procedural due process in connection with the ad hoc committee's investigation and the JRC hearing, in light of our independent review and determination of those issues, discussed *ante*, Pardo is unable to show any prejudice even assuming the

D. *Substantial Evidence Supports the Findings of the JRC*

Pardo also claims the findings and decision of the JRC in connection with various patients treated by Pardo were not supported by substantial evidence, and the appeal board erred when it concluded otherwise. Because of the (alleged) lack of evidence, Pardo claims the JRC "chose to invoke the credibility issue" and consistently sided with the testimony of its own employees while rejecting Pardo's competing testimony.

As we noted *ante*, our task is to review the administrative record and determine whether the agency's findings are supported by substantial evidence. (*JKH Enterprises, Inc. v. Department of Industrial Relations, supra*, 142 Cal.App.4th p. 1058.) "The substantial evidence rule provides that where a finding of fact is attacked on the ground that it is not sustained by the evidence, the power of an appellate court begins and ends with a determination whether there is any substantial evidence, contradicted or uncontradicted, supporting the finding." (*Huang v. Board of Directors* (1990) 220 Cal.App.3d 1286, 1293-1294.) In making this determination, we examine all relevant evidence in the entire administrative record and view that evidence in the light most favorable to the judgment, resolving all conflicts in the evidence and drawing all inferences in support of the judgment. (*Young v. Gannon, supra*, 97 Cal.App.4th at p. 225.) We do not, however, "weigh the evidence, consider the credibility of witnesses, or resolve conflicts in the evidence or in the reasonable inferences that may be drawn from it." (*Huang v. Board of Directors, supra*, 220 Cal.App.3d at p. 1294.)

board's decision violated the bylaws by not specifically referencing the parties' responses to the questions. (See *Hinrichs v. County of Orange, supra*, 125 Cal.App.4th at p. 928.)

Like the trial court and appeal board before us, our review of the decision of the JRC and the record on which it is based show substantial evidence supports the decision of the JRC with respect to each of the nine patients treated by Pardo.¹⁶ As we have noted, the JRC decision sets forth in detail the specific charges against Pardo with respect to each patient. The decision then summarizes the evidence proffered by the MSEC and Pardo in connection with each charge, and states its conclusion and the reason(s) for its conclusion for each patient. Although Pardo offered evidence contrary to those findings, as a court of review our power " 'begins and ends with a determination whether there is any substantial evidence, contradicted or uncontradicted, supporting the finding.' " (See *Huang v. Board of Directors*, *supra*, 220 Cal.App.3d at pp. 1293-1294.)

DISPOSITION

The judgment is affirmed. UCSDMC is entitled to its costs on appeal.

BENKE, Acting P. J.

WE CONCUR:

HUFFMAN, J.

McDONALD, J.

¹⁶ The allegations that Pardo's clinical care fell below the standard of care actually involved 11 patients. The JRC found, however, that the MSEC did not sustain its burden of proof with respect to two patients, WS and DB. The JRC also found the MSEC did not meet its burden with respect to the "jury duty incident" involving Pardo and various incidents involving Pardo and medical staff members. The fact the JRC made findings in Pardo's favor undermines his argument the JRC (allegedly) acted in bad faith in consistently rejecting his testimony in favor of the testimony of the medical staff.